

APPEAL NO. 030516
FILED APRIL 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 30, 2003. The hearing officer determined that the respondent (carrier herein) waived its right to contest the compensability of the appellant's (claimant herein) compensable injury; that the claimant's compensable injury of _____, does not extend to include herniated discs at L4-5 and L5-S1; that the claimant attained maximum medical improvement (MMI) on May 8, 2002, with no permanent impairment; and that the claimant had disability beginning on February 9 continuing through November 1, 2002. The claimant appeals the hearing officer's extent of injury, MMI, and impairment rating (IR) determinations. The carrier responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The appeal in the present case hinges on the extent-of-injury question. The claimant argues that the hearing officer should not have adopted the MMI and IR of the designated doctor, which the designated doctor stated would only apply if the claimant's injury was determined not to include herniated discs at L4-5 and L5-S1.

As far as the extent-of-injury issue is concerned, extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715

S.W.2d 629, 635 (Tex. 1986). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

In the present case, there was simply conflicting evidence, and it was the province of the hearing officer to resolve these conflicts. As the claimant points out, the designated doctor expressed the opinion that the claimant's injury did include the herniated discs in issue. However, on the issue of extent of injury the opinion of the designated doctor is not entitled to presumptive weight and there was contrary medical evidence which the hearing officer apparently found to be more persuasive. Applying the above standard of review, we cannot say that the hearing officer erred as a matter of law in so finding.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN RISK FUNDING INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge